

REFERENCE TITLE: ASRS; return to work changes.

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

## **SB 1352**

Introduced by  
Senator Gould

AN ACT

AMENDING SECTIONS 38-711, 38-766 AND 38-766.01, ARIZONA REVISED STATUTES;  
RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-711, Arizona Revised Statutes, is amended to  
3 read:

4 38-711. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Active member" means a member as defined in paragraph 23,  
7 subdivision (b) of this section who satisfies the eligibility criteria  
8 prescribed in section 38-727 and who is currently making member contributions  
9 as prescribed in section 38-736.

10 2. "Actuarial equivalent" means equality in value of the aggregate  
11 amounts expected to be received under two different forms of payment, based  
12 on mortality and interest rate assumptions approved from time to time by the  
13 board.

14 3. "ASRS" means the Arizona state retirement system established by  
15 this article.

16 4. "Assets" means the resources of ASRS including all cash,  
17 investments or securities.

18 5. "Average monthly compensation" means:

19 (a) For a member whose membership in ASRS commenced before January 1,  
20 1984 and who left the member's contributions on deposit or reinstated  
21 forfeited credited service pursuant to section 38-742 for a period of  
22 employment that commenced before January 1, 1984, the monthly average of  
23 compensation on which contributions were remitted during a period of sixty  
24 consecutive months during which the member receives the highest compensation  
25 within the last one hundred twenty months of credited service. Any month for  
26 which no contributions are reported to ASRS or that falls within a period of  
27 nonpaid or partially paid leave of absence or sabbatical leave shall be  
28 excluded from the computation. The sixty consecutive months may entirely  
29 precede, may be both before and after or may be completely after any excluded  
30 months. If the member was employed for less than sixty consecutive months,  
31 the average monthly compensation is based on the total consecutive months  
32 worked. Payments for accumulated vacation or annual leave, sick leave,  
33 compensatory time or other forms of termination pay which, before August 12,  
34 2005, constitute compensation for members whose membership in ASRS commenced  
35 before January 1, 1984, do not cease to be included as compensation if paid  
36 in the form of nonelective employer contributions under a 26 United States  
37 Code section 403(b) plan if all payments of employer and employee  
38 contributions are made at the time of termination. Contributions shall be  
39 made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

40 (b) Effective July 1, 1985, the monthly average of compensation on  
41 which contributions were remitted during a period of thirty-six consecutive  
42 months during which a member receives the highest compensation within the  
43 last one hundred twenty months of credited service. Any month for which no  
44 contributions are reported to ASRS or that falls within a period of nonpaid  
45 or partially paid leave of absence or sabbatical leave shall be excluded from

1 the computation. The thirty-six consecutive months may entirely precede, may  
2 be both before and after or may be completely after any excluded months. If  
3 the member was employed for less than thirty-six consecutive months, the  
4 average monthly compensation shall be based on the total consecutive months  
5 worked. This subdivision applies only to members whose membership in ASRS  
6 was effective after December 31, 1983 or who agree in writing as a binding  
7 condition of eligibility for being granted the benefit advantages available  
8 under this subdivision to have their benefit computed on the basis of the  
9 definition of compensation.

10 6. "Board" means the ASRS board established in section 38-713.

11 7. "Compensation" means the gross amount paid to a member by an  
12 employer as salary or wages, including amounts that are subject to deferred  
13 compensation or tax shelter agreements, for services rendered to or for an  
14 employer, or that would have been paid to the member except for the member's  
15 election or a legal requirement that all or part of the gross amount be used  
16 for other purposes, but does not include amounts paid in excess of  
17 compensation limits established in section 38-746. Compensation includes  
18 amounts paid as salary or wages to a member by a second employer IF THE  
19 MEMBER MEETS THE REQUIREMENTS PRESCRIBED IN PARAGRAPH 23, SUBDIVISION (b) OF  
20 THIS SECTION WITH THAT SECOND EMPLOYER. Compensation, as provided in  
21 paragraph 5, subdivision (b) of this section, does not include:

22 (a) Lump sum payments, on termination of employment, for accumulated  
23 vacation or annual leave, sick leave, compensatory time or any other form of  
24 termination pay whether the payments are made in one payment or by  
25 installments over a period of time.

26 (b) Damages, costs, attorney fees, interest or other penalties paid  
27 pursuant to a court order or a compromise settlement or agreement to satisfy  
28 a grievance or claim even though the amount of the payment is based in whole  
29 or in part on previous salary or wage levels, except that, if the court order  
30 or compromise settlement or agreement directs salary or wages to be paid for  
31 a specific period of time, the payment is compensation for that specific  
32 period of time. If the amount directed to be paid is less than the actual  
33 salary or wages that would have been paid for the period if service had been  
34 performed, the contributions for the period shall be based on the amount of  
35 compensation that would have been paid if the service had been performed.

36 (c) Payment, at the member's option, in lieu of fringe benefits that  
37 are normally paid for or provided by the employer.

38 (d) Merit awards pursuant to section 38-613 and performance bonuses  
39 paid to assistant attorneys general pursuant to section 41-192.

40 (e) AMOUNTS THAT ARE PAID AS SALARY OR WAGES TO A MEMBER FOR WHICH  
41 EMPLOYER CONTRIBUTIONS HAVE NOT BEEN PAID.

42 8. "Contingent annuitant" means the person named by a member to  
43 receive retirement income payable following a member's death after retirement  
44 as provided in section 38-760.

1           9. "Credited service" means, subject to section 38-739, the number of  
2 years standing to the member's credit on the books of ASRS during which the  
3 member made the required contributions.

4           10. "Current annual compensation" means the greater of:

5           (a) Annualized compensation of the typical pay period amount  
6 immediately before the date of a request to ASRS to purchase credited service  
7 pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount  
8 shall be determined by taking the five pay periods immediately before the  
9 date of a request, disregarding the highest and lowest compensation amount  
10 pay periods and averaging the three remaining pay periods.

11           (b) Annualized compensation of the partial year, disregarding the  
12 first compensation amount pay period, if the member has less than twelve  
13 months total credited service on the date of a request to purchase credited  
14 service pursuant to section 38-743, 38-744 or 38-745.

15           (c) The sum of the twelve months of compensation immediately before  
16 the date of a request to ASRS to purchase credited service pursuant to  
17 section 38-743, 38-744 or 38-745.

18           (d) The sum of the thirty-six months of compensation immediately  
19 before the date of a request to ASRS to purchase credited service pursuant to  
20 section 38-743, 38-744 or 38-745 divided by three.

21           (e) If the member has retired one or more times from ASRS, the average  
22 monthly compensation that was used for calculating the member's last pension  
23 benefit times twelve.

24           11. "Early retirement" means retirement before a member's normal  
25 retirement date after five years of total credited service and attainment of  
26 age fifty.

27           12. "Effective date" means July 1, 1970, except with respect to  
28 employers and members whose contributions to ASRS commence thereafter, the  
29 effective date of their membership in ASRS is as specified in the applicable  
30 joinder agreement.

31           13. "Employer" means:

32           (a) This state.

33           (b) Participating political subdivisions.

34           (c) Participating political subdivision entities.

35           14. "Employer contributions" means all amounts paid into ASRS by an  
36 employer on behalf of a member.

37           15. "Fiscal year" means the period from July 1 of any year to June 30  
38 of the following year.

39           16. "Inactive member" means a member who previously made contributions  
40 to ASRS and who satisfies each of the following:

41           (a) Has not retired.

42           (b) Is not eligible for active membership in ASRS.

43           (c) Is not currently making contributions to ASRS.

44           (d) Has not withdrawn contributions from ASRS.

1       17. "Interest" means the assumed actuarial investment earnings rate  
2 approved by the board.

3       18. "Internal revenue code" means the United States internal revenue  
4 code of 1986, as amended.

5       19. "Investment management" means the persons, companies, banks,  
6 insurance company investment funds, mutual fund companies, management or any  
7 combinations of those entities that are appointed by ASRS and that have  
8 responsibility and authority for investment of the monies of ASRS.

9       20. "Late retirement" means retirement after normal retirement.

10       21. "Leave of absence" means any unpaid leave authorized by the  
11 employer, including leaves authorized for sickness or disability or to pursue  
12 education or training.

13       22. "Life annuity" means equal monthly installments payable during the  
14 member's lifetime after retirement.

15       23. "Member":

16           (a) Means any employee of an employer on the effective date.

17           (b) Means all employees of an employer who are eligible for membership  
18 pursuant to section 38-727 and who are engaged to work at least twenty weeks  
19 in each fiscal year and at least twenty hours each week.

20           (c) Means any person receiving a benefit under ASRS.

21           (d) Means any person who is a former active member of ASRS and who has  
22 not withdrawn contributions from ASRS pursuant to section 38-740.

23           (e) Does not include any employee of an employer who is otherwise  
24 eligible pursuant to this article and who begins service in a limited  
25 appointment for not more than eighteen months on or after July 1, 1979. If  
26 the employment exceeds eighteen months, the employee shall be covered by ASRS  
27 as of the beginning of the nineteenth month of employment. In order to be  
28 excluded under this subdivision, classifications of employees designated by  
29 employers as limited appointments must be approved by the director.

30           (f) Does not include any leased employee. For the purposes of section  
31 414(n) of the internal revenue code, "leased employee" means an individual  
32 who:

33           (i) Is not otherwise an employee of an employer.

34           (ii) Pursuant to a leasing agreement between the employer and another  
35 person, performs services for the employer on a substantially full-time basis  
36 for at least one year.

37           (iii) Performs services under the primary direction or control of the  
38 employer.

39       24. "Member contributions" means all amounts paid to ASRS by a member.

40       25. "Normal costs" means the sum of the individual normal costs for all  
41 active members for each fiscal year. The normal cost for an individual  
42 active member is the cost that is assigned to the fiscal year using the  
43 projected unit credit method.

44       26. "Normal retirement age" means the age at which a member reaches the  
45 member's normal retirement date.

1       27. "Normal retirement date" means the earliest of the following:  
2       (a) A member's sixty-fifth birthday.  
3       (b) A member's sixty-second birthday and completion of at least ten  
4 years of credited service.  
5       (c) The first day that the sum of a member's age and years of total  
6 credited service equals eighty.  
7       28. "Political subdivision" means any political subdivision of this  
8 state and includes a political subdivision entity.  
9       29. "Political subdivision entity" means an entity:  
10       (a) That is located in this state.  
11       (b) That is created in whole or in part by political subdivisions,  
12 including instrumentalities of political subdivisions.  
13       (c) Where a majority of the membership of the entity is composed of  
14 political subdivisions.  
15       (d) Whose primary purpose is the performance of a government related  
16 service.  
17       30. "Retired member" means a member who is receiving retirement  
18 benefits pursuant to this article.  
19       31. "Service year" means fiscal year, except that:  
20       (a) If the normal work year required of a member is less than the full  
21 fiscal year but is for a period of at least nine months, the service year is  
22 the normal work year.  
23       (b) For a salaried member employed on a contract basis under one  
24 contract, or two or more consecutive contracts, for a total period of at  
25 least nine months, the service year is the total period of the contract or  
26 consecutive contracts.  
27       (c) In determining average monthly compensation pursuant to paragraph  
28 5 of this section, the service year is considered to be twelve months of  
29 compensation.  
30       32. "State" means this state, including any department, office, board,  
31 commission, agency, institution or other instrumentality of this state.  
32       33. "Vested" means that a member is eligible to receive a future  
33 retirement benefit.  
34       Sec. 2. Section 38-766, Arizona Revised Statutes, is amended to read:  
35       38-766. Retired members; return to work; suspension of  
36       benefits; exceptions; maximum benefit  
37       A. A retired member who is engaged to work by an employer for at least  
38 twenty weeks in each fiscal year and at least twenty hours per week resumes  
39 active membership in ASRS. ASRS shall suspend payment of the member's  
40 retirement benefits until the member either:  
41       1. Terminates employment AND FILES AN APPLICATION FOR RERETIREMENT ON  
42 A FORM THAT IS APPROVED BY THE DIRECTOR.  
43       2. Attains a normal retirement date, ~~and~~ no longer meets the  
44 requirements for active membership pursuant to this subsection AND FILES AN  
45 APPLICATION FOR RERETIREMENT ON A FORM THAT IS APPROVED BY THE DIRECTOR.

B. A member who satisfies subsection A, paragraph 1 or 2 of this section is entitled to receive an annuity recomputed to include the additional compensation and credited service. However, the recomputed annuity shall be in the original optional form chosen pursuant to section 38-760, with the same beneficiary, if applicable, as when the member first retired. A member who retired under a provision of law allowing increased benefits if the retirement occurred during a specific period of time and who subsequently becomes an employee under ASRS shall not retain the increased benefits under the prior law when benefits are computed for the member's most recent retirement.

C. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, ASRS SHALL NOT SUSPEND THE PAYMENT OF RETIREMENT BENEFITS IF A RETIRED MEMBER BEGINS OR RETURNS TO EMPLOYMENT WITH AN EMPLOYER IN A POSITION THAT SATISFIES ALL OF THE FOLLOWING:

1. RESULTS IN A TRUE CHANGE IN POSITION, JOB DUTIES AND JOB TITLE FROM THE POSITION OCCUPIED BY THE MEMBER BEFORE ASRS RETIREMENT.

2. EITHER:

(a) REQUIRES PARTICIPATION IN ANOTHER STATE RETIREMENT SYSTEM, PLAN OR PROGRAM AND THE RETIRED MEMBER MAKES CONTRIBUTIONS OR WAIVES PARTICIPATION PURSUANT TO SECTION 38-804, SUBSECTION A.

(b) PERMITS A MEMBER TO ELECT TO PARTICIPATE IN ANOTHER STATE RETIREMENT SYSTEM, PLAN OR PROGRAM AND THE MEMBER MAKES SUCH AN ELECTION.

3. DOES NOT REQUIRE MEMBERSHIP IN THE DEFINED BENEFIT PLAN ESTABLISHED BY THIS ARTICLE.

D. A RETIRED MEMBER WHO RETURNS TO WORK PURSUANT TO SUBSECTION C OF THIS SECTION DOES NOT ACCRUE CREDITED SERVICE, MEMBER SERVICE AS PROVIDED IN SECTION 15-1628, SUBSECTION B, PARAGRAPH 4, ADDITIONAL ACCOUNT BALANCES, RETIREMENT BENEFITS OR LONG-TERM DISABILITY PROGRAM BENEFITS PURSUANT TO ARTICLE 2.1 OF THIS CHAPTER FOR THE PERIOD THE RETIRED MEMBER RETURNS TO WORK. THE PERIOD THE RETIRED MEMBER RETURNS TO WORK IS NOT ELIGIBLE FOR PURCHASE UNDER SECTION 38-743 OR 38-744.

~~E.~~ E. Section 38-769, subsection L applies when determining the maximum benefit that may be paid to a retired member who resumes active membership and subsequently retires.

Sec. 3. Section 38-766.01, Arizona Revised Statutes, is amended to read:

38-766.01. Retired members; return to work; employer contribution payments; definitions

A. Notwithstanding section 38-766, AT A RETIRED MEMBER'S ELECTION, a retired member may return to work and still be eligible to receive retirement benefits if all of the following requirements are satisfied:

1. The retired member has attained the member's normal retirement age.

2. The retired member terminated employment at least twelve CONSECUTIVE months before returning to work.

~~3. If the retired member returns to work as a teacher, the retired member is working as a certificated teacher.~~

4. 3. If the retired member returns to work as a teacher, the retired member's employment is not subject to the requirements prescribed in sections 15-538, 15-538.01 and 15-539 through 15-543.

~~5. The retired member acknowledges in writing the provisions of this section.~~

B. A RETIRED MEMBER'S ELECTION TO RETURN TO WORK UNDER THIS SECTION IS IRREVOCABLE FOR THE REMAINDER OF THE RETIRED MEMBER'S EMPLOYMENT.

C. THE RETIRED MEMBER SHALL ACKNOWLEDGE THIS SECTION IN WRITING AND FILE THE ACKNOWLEDGEMENT WITH THE EMPLOYER WITHIN THIRTY DAYS OF RETURNING TO WORK.

~~B.~~ D. An employer of a retired member who returns to work pursuant to this section shall not pay contributions on behalf of the retired member pursuant to section 38-736, 38-737 or 38-797.05.

E. A retired member who returns to work pursuant to this section does not accrue credited service, MEMBER SERVICE AS PROVIDED IN SECTION 15-1628, SUBSECTION B, PARAGRAPH 4, ADDITIONAL ACCOUNT BALANCES, retirement benefits or long-term disability program benefits pursuant to article 2.1 of this chapter for the period the retired member returns to work. THE PERIOD THE RETIRED MEMBER RETURNS TO WORK IS NOT ELIGIBLE FOR PURCHASE UNDER SECTION 38-743 OR 38-744.

F. NOTWITHSTANDING SUBSECTION D OF THIS SECTION, BEGINNING JULY 1, 2010, AN EMPLOYER SHALL PAY CONTRIBUTIONS AT AN ALTERNATE CONTRIBUTION RATE ON BEHALF OF A RETIRED MEMBER WHO RETURNS TO WORK BEFORE SATISFYING THE REQUIREMENT PRESCRIBED IN SUBSECTION A, PARAGRAPH 2 OF THIS SECTION AS A LEASED EMPLOYEE, AS DEFINED IN SECTION 38-711, PARAGRAPH 23, SUBDIVISION (f), OR AS AN INDEPENDENT CONTRACTOR AND WHO PERFORMS SERVICES THAT WOULD OTHERWISE BE PERFORMED BY AN ACTIVE MEMBER. FOR A MEMBER WHOSE MOST RECENT RETIREMENT BEGINS ON OR AFTER JULY 1, 2010, THE PERIOD THE RETIRED MEMBER RETURNS TO WORK UNDER THIS SUBSECTION SHALL NOT COUNT TOWARDS THE TWELVE MONTH REQUIREMENT PRESCRIBED IN SUBSECTION A, PARAGRAPH 2 OF THIS SECTION.

G. AN EMPLOYER OF A RETIRED MEMBER SHALL PAY CONTRIBUTIONS AT THE ALTERNATE CONTRIBUTION RATE PURSUANT TO SUBSECTION F OF THIS SECTION ON BEHALF OF A RETIRED MEMBER WHO RETURNS TO WORK UNTIL NO CONTRIBUTIONS HAVE BEEN MADE ON BEHALF OF THE RETIRED MEMBER FOR A PERIOD OF TWELVE CONSECUTIVE MONTHS.

H. THE ACTUARY SHALL MAKE THE DETERMINATION OF THE ALTERNATE CONTRIBUTION RATE IN AN ANNUAL VALUATION PERFORMED AS OF JUNE 30. THE VALUATION AS OF JUNE 30 OF A CALENDAR YEAR SHALL DETERMINE THE PERCENTAGE TO BE APPLIED TO THE COMPENSATION OF A RETIRED MEMBER WHO MEETS THE REQUIREMENTS OF SUBSECTION F OF THIS SECTION FOR THE FISCAL YEAR BEGINNING ON JULY 1 OF THE FOLLOWING CALENDAR YEAR. THE ALTERNATE CONTRIBUTION RATE IS EQUAL TO THE GREATER OF TWO TIMES THE RATE ESTABLISHED BY THE ASRS ACTUARY PURSUANT TO SECTION 38-737 PLUS THE RATE DETERMINED BY THE BOARD PURSUANT TO SECTION



1 38-797.06 MINUS THE EMPLOYER NORMAL COST OR TWO PER CENT. AN ACTUARY WHO IS  
2 SELECTED BY THE BOARD AND WHO IS A FELLOW OF THE SOCIETY OF ACTUARIES SHALL  
3 DETERMINE THE ALTERNATE CONTRIBUTION RATE ON AN ANNUAL BASIS.

4 I. ASRS SHALL DETERMINE THE SCHEDULE AND METHOD OF PAYMENT OF THE  
5 ALTERNATE CONTRIBUTION RATE. SUBJECT TO SECTION 38-738, SUBSECTION A, ALL  
6 CONTRIBUTIONS MADE BY THE EMPLOYER AND ALLOCATED TO THE FUND ESTABLISHED BY  
7 SECTION 38-712 ARE IRREVOCABLE AND SHALL BE USED AS BENEFITS UNDER THIS  
8 ARTICLE OR TO PAY THE EXPENSES OF ASRS. PAYMENTS MADE PURSUANT TO THIS  
9 SECTION BY EMPLOYERS BECOME DELINQUENT AFTER THE DUE DATE PRESCRIBED IN THE  
10 BOARD'S RULES AND THEREAFTER SHALL BE INCREASED BY INTEREST FROM AND AFTER  
11 THAT DATE UNTIL PAYMENT IS RECEIVED BY ASRS. ASRS SHALL CHARGE INTEREST ON  
12 THE DELINQUENT PAYMENTS AS PRESCRIBED IN SECTION 38-711, PARAGRAPH 17. ASRS  
13 MAY RECOVER DELINQUENT PAYMENTS DUE UNDER THIS SUBSECTION, TOGETHER WITH  
14 INTEREST CHARGES AS PROVIDED IN THIS SUBSECTION, BY ACTION IN A COURT OF  
15 COMPETENT JURISDICTION AGAINST A POLITICAL SUBDIVISION LIABLE FOR PAYMENTS  
16 OR, AT THE REQUEST OF THE DIRECTOR, ASRS MAY DEDUCT THE DELINQUENT PAYMENTS  
17 AND INTEREST CHARGES FROM ANY OTHER MONIES, INCLUDING EXCISE REVENUE TAXES,  
18 PAYABLE TO THE POLITICAL SUBDIVISION BY ANY DEPARTMENT OR AGENCY OF THIS  
19 STATE.

20 J. AN EMPLOYER OF A RETIRED MEMBER SHALL SUBMIT ANY REPORTS, DATA,  
21 PAPERWORK OR MATERIALS REQUESTED BY ASRS THAT ARE NECESSARY TO DETERMINE THE  
22 COMPENSATION OF OR FEES ASSOCIATED WITH A RETIRED MEMBER WHO RETURNS TO WORK  
23 OR TO DETERMINE THE USE OF THE RETURN TO WORK PROGRAM.

24 K. FOR THE PURPOSES OF THIS SECTION:

25 1. "ALTERNATE CONTRIBUTION RATE" MEANS A RATE AS DETERMINED BY THE  
26 ASRS ACTUARY PURSUANT TO THIS SECTION.

27 2. "EMPLOYER" DOES NOT MEAN THE ENTITY THAT LEASES THE RETIRED MEMBER  
28 TO THE EMPLOYER.